



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Winzler & Kelly

File: B-260449

Date: June 19, 1995

Theodore H. Purcell for the protester.
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for the agency.
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of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Protest that agency improperly canceled a requirement for architectural-engineering services is denied where the decision to cancel was reasonably based both on agency concerns that the integrity of the procurement process appeared to have been undermined by certain unauthorized actions of the selection board and on the agency's determination that the solicited services would not meet the agency's minimum needs.

DECISION

Winzler & Kelly (W&K) protests the actions of the Department of the Interior, National Park Service (NPS), in connection with its acquisition of architectural and engineering (A-E) design and design-related services associated with the transition and conversion of the U.S. Army Presidio of San Francisco to the NPS. W&K argues that the NPS improperly invalidated its selection as the most qualified offeror and reissued the Commerce Business Daily (CBD) announcement.

We deny the protest.

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In accordance with procedures prescribed in the Brooks Act for the procurement of professional A-E services,¹ the NPS published a notice in the CBD on May 2, 1994, announcing the requirements and evaluation criteria for the selection of a firm to provide A-E services.

A total of 38 firms (including W&K) responded to the CBD announcement by the closing time. A pre-selection board reviewed the submissions, and recommended that the selection board review 14 firms. Interviews were conducted with the four top-ranked firms, and W&K was selected as the most highly qualified on July 28. The agency then requested cost and pricing data from W&K. NPS' Denver Service Center (DSC), however, did not approve the selection board's selection, and upon further review, the agency determined that there had been deficiencies in the acquisition process and that the resulting contract might not meet the needs of the government. Therefore, the agency notified W&K on December 5 that it had determined not to award to it and instead decided to reissue the CBD announcement. On December 23, W&K protested to the agency. NPS denied this protest and advised all responding firms that the acquisition was being canceled. W&K protested to our Office.

W&K argues that the NPS improperly invalidated its selection as the most qualified offeror. W&K asserts that the agency's cancellation of this requirement, 3 months after conducting price negotiations with W&K, demonstrates bad faith on the part of the agency.

A contracting agency has broad discretion to determine when it is appropriate to cancel a procurement conducted under Brook Act procedures and may do so by establishing a reasonable basis for the cancellation. Encon Management, Inc., B-233329.2, Dec. 5, 1988, 88-2 CPD ¶ 564. In this regard, agencies are afforded the same discretion to cancel as in other types of procurements. Parkey & Partners Architects, B-217319, Mar. 22, 1985, 85-1 CPD ¶ 336. Further, an agency may cancel a solicitation no matter when the information precipitating the cancellation arises, even if it is not until proposals are submitted and the protester had incurred costs in pursuing the award. Brackett Aircraft Radio Co., B-246282, Jan. 8, 1992, 92-1 CPD ¶ 43.

¹See 40 U.S.C. § 541 et seq. (1988). The Brooks Act requires federal agencies to select contractors on the basis of demonstrated competence and qualifications; the procedures do not include price competition. Once a firm is selected as the most highly qualified to provide the services, the agency is required to negotiate a contract at a fair and reasonable level of compensation.


We conclude that the cancellation in this case was reasonable. The NPS has offered two legally sufficient justifications for its decision to cancel the requirement. First, the agency notes that in evaluating the responses to the CBD announcement the selection board improperly altered the relative importance of the evaluation factors from that listed in the CBD notice, which compromised the integrity of the evaluation and the selection process. For example, having a local office within a 100-mile radius of Fort Mason was listed as the seventh evaluation factor in the CBD notice; however, the selection board treated this evaluation factor as the third most important evaluation factor. An agency may properly cancel a procurement based on its concerns that the integrity of the procurement process appeared to have been compromised by the improper conduct of the selection committee. DGS Contract Servs., B-243647.2, Sept. 18, 1991, 91-2 CPD ¶ 258.

Secondly, the agency determined that the requirements listed in the original CBD notice did not reflect its actual needs because the notice failed to adequately describe the types of services and relevant experience necessary for the contemplated A-E project. The revised CBD notice contains a more detailed description of the anticipated work and the disciplines that may be required. For example, while the anticipated work listed in the original CBD notice includes architecture, landscape architecture, and special studies, the revised CBD notice also includes rehabilitating and upgrading existing structures (including those of a historic nature), historic preservation/repair, special studies including environmental and compliance analysis, sewage collection and disposal, sanitary landfill, asbestos removal and toxic waste disposal. In addition to this more detailed description of the work anticipated for this project, the revised CBD notice also includes a list of the disciplines that may be required, depending on the type of anticipated work. Thus, the revised CBD notice provides that the anticipated work may include the following disciplines: architecture (historical and contemporary), sanitary, environmental/natural resources, and specialized personnel conversant in dealing with federal environmental and historic preservation laws, such as the National Environmental Policy Act of 1969 and the National Historic Preservation Act of 1966.

Under these circumstances, we think the agency reasonably concluded that the original notice failed to adequately describe the anticipated work and the disciplines that may be required under the project. Cancellation was proper for this reason also. See The Big Picture Co., B-224112.2, Mar. 2, 1987, 87-1 CPD ¶ 232.

Finally, the protester contends that the agency's decision to invalidate its selection as the most qualified offeror, and to reissue the CBD notice, was made in bad faith. The record provides no support for this allegation. W&K has presented nothing more than surmise and speculative comments suggesting that the agency has acted in bad faith. This simply does not provide a sufficient basis to find bad faith or improper conduct on the part of the agency. Brisk Waterproofing Co., Inc., B-256138.3, June 30, 1994, 94-1 CPD ¶ 394.

The protest is denied.


Robert P. Murphy
General Counsel